

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**CITY OF MINGO
NPDES Permit #91-33-0-01
Warren County, Iowa**

**AMENDED ADMINISTRATIVE
CONSENT ORDER
NO. 2010-WW-03-A1**

TO: City of Mingo
Gary Bartels, Mayor
City Hall
101 S. Station
Mingo, IA 50168

I. SUMMARY

This amended administrative consent order (Amended Order) is entered into between the City of Mingo (Mingo) and the Iowa Department of Natural Resources (DNR) for the purpose of modifying the previously established compliance schedule for the construction of necessary improvements to Mingo's wastewater treatment and collection systems. . The parties have agreed to the provisions below.

Any questions regarding this Amended Order should be directed to:

Relating to technical requirements:

Tom Atkinson, Environmental Specialist
DNR Field Office #5
401 SW 7th Street, Suite 1
Des Moines, Iowa 50309
Phone: 515/725-0268

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Amended Order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (wastewater) and the rules adopted or permits issued pursuant to that part, and Iowa Code

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section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The DNR and Mingo agree that the following facts are applicable to this matter:

1. Mingo owns and operates a wastewater treatment facility and the associated sanitary sewer collection system. The wastewater treatment facility currently consists of a two-cell facultative lagoon system. The wastewater treatment facility is operated pursuant to Iowa NPDES Permit No. 50-52-0-01.

2. The DNR and Mingo entered into Administrative Consent Order No. 2010-WW-03 on February 25, 2010. The Statement of Facts set forth in that consent order are hereby reaffirmed and incorporated by reference into this Amended Order.

3. In 2010, Mingo completed construction of lift station and collection system upgrades as agreed upon in the original consent order. These system improvements had a total cost of approximately \$400,000.

4. On January 17, 2011, Mingo submitted a request to amend the compliance schedule contained in the original consent order in regard to the schedule for the construction of a third lagoon cell at the wastewater treatment facility. The request was based upon several factors including the total project costs, the projected monthly charges for ratepayers, and the anticipated impact of undertaking inflow & infiltration (I & I) reduction measures on the overall sizing and cost of the third lagoon cell.

5. On November 11, 2011, Mingo submitted a third-party prepared sewer rate study assessing the impacts of the planned wastewater treatment and collection system improvements on the rates to be paid by the ratepayers of Mingo. The study called for significant rate increases over a 15-year period to fund the necessary projects.

6. On March 22, 2012, Mingo submitted a proposed schedule for completing the necessary wastewater treatment and collection system improvements. The proposal includes schedules user rate increases to raise the monthly average sewer bill for residents of Mingo from the current level of \$42 per month to an average rate of \$87 per month. Total project costs are anticipated to exceed \$1.8 million.

7. Based upon the information submitted by Mingo, the DNR has determined that an extended compliance schedule is warranted and that this Amended Order should be issued.

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IV. CONCLUSIONS OF LAW

The DNR and Mingo agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. Discharges in violation of Mingo's permit, including bypasses or sanitary sewer overflows, are violations of section 455B.186.
2. Iowa Code section 455B.173(3) authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems, the discharge of pollutants into waters of the state, and the issuance of permits to waste disposal systems. The Commission has done so at 567 IAC 60 through 69.
3. Pursuant to 567 IAC 63.6(1), bypasses from any portion of a treatment facility or from a sanitary sewer collection system designed to carry only sewage are prohibited. Mingo can not comply with this requirement without further system improvements. Mingo is undertaking such improvements.

V. ORDER

By the execution of this Amended Order, the DNR orders and Mingo agrees to the schedule set forth below. This schedule supersedes and replaces the schedule set forth in the prior consent order in its entirety. The DNR hereby acknowledges that Mingo completed the sanitary sewer collection system and lift station rehabilitation or repair work previously required.

1. By January 1 of each year during the term of this Amended Order, Mingo shall submit a yearly update to DNR Field Office #5 detailing the progress made toward completing the requirements of this Amended Order.
2. By December 31, 2013, Mingo shall complete the rehabilitation of the remaining portions of the sanitary sewer collection system, as described as Phase 1 in the letter from Veenstra & Kimm, Inc., dated March 22, 2012 and submitted on behalf of Mingo (schedule letter).
3. By December 31, 2014, Mingo shall complete the rehabilitation of the existing wastewater treatment lagoons at the Mingo wastewater treatment facility as described in the schedule letter. This work shall include the repairing of the lagoon structures, the intercell piping, the effluent piping, the valves, and any other work described or referenced in Phase 2 of the schedule letter. To the extent that any work is undertaken for which a construction permit must be obtained from the DNR, Mingo shall follow normal construction permitting procedures.

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4. By September 1, 2020, Mingo shall submit an updated Facility Plan to the DNR, which includes the proposed Phase 3 project described in the schedule letter. To the extent that any work is undertaken in Phase 3 for which a construction permit must be obtained from the DNR, Mingo shall follow normal construction permitting procedures.

5. By March 1, 2021, Mingo shall submit to the DNR proof of having fully acquired any additional land necessary for the construction of Phase 3. The submittal shall include any acquisitions or waivers necessary to comply with required separation distances.

6. By November 1, 2021, Mingo shall submit final plans and specifications for the completion of Phase 3 at the Mingo wastewater treatment facility.

7. By May 1, 2022, Mingo shall start construction of Phase 3 at the Mingo wastewater treatment facility.

8. By July 1, 2023, Mingo shall complete the construction of phase 3 at the Mingo wastewater treatment facility.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at IAC Chapter 567 - 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Amended Order without penalties. The decision to forego a penalty at this time is based upon the third-party financial analysis submitted by Mingo, the total project costs, and the scheduled rate increases adopted by Mingo. The DNR has determined that the significant financial burden agreed upon by Mingo warrants and justifies the DNR decision not to impose a penalty at this point. The DNR reserves all discretion to assess administrative and civil penalties for violation of the terms of this Amended Order or other applicable law.

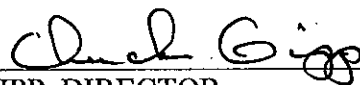
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VII. WAIVER OF APPEAL RIGHTS

This Amended Order is entered into knowingly by and with the consent of Mingo. For that reason, Mingo waives the right to appeal this Amended Order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this Amended Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with section V. Order, of this Amended Order constitutes full satisfaction of all requirements pertaining to the violations described in section "IV. Conclusions of Law" of this Amended Order.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 9th day of
September, 2012


GARY BARTELS, MAYOR
City of Mingo

Dated this 21 day of
August, 2012